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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re T.C., a Person Coming Under the  
Juvenile Court Law.

H046222  
(Santa Clara County  
Super. Ct. No. 118JV43079A)

THE PEOPLE,

Plaintiff and Respondent,

v.

T.C.,

Defendant and Appellant.

Following a contested jurisdictional hearing, the juvenile court found true allegations that the minor, T.C., committed second degree robbery, personally used a deadly weapon when committing the robbery, and committed two counts of dissuading a witness. At the dispositional hearing, the juvenile court declared T.C. a ward of the court and ordered probation with multiple conditions. The probation conditions required T.C. to provide the passwords for and to submit to searches of his electronic devices and social media accounts (electronic search conditions), and prohibited T.C. from knowingly associating with gang members, participating in gang activity, or visiting locations with known gang-related activity (gang conditions).

On appeal, T.C. contends that the electronic search conditions are unconstitutionally overbroad and the electronic search conditions and gang conditions are unconstitutionally vague. For reasons that we will explain, we modify the conditions of probation to include a definition of the term “gang” and, as modified, affirm the judgment.

## **I. FACTS AND PROCEDURAL BACKGROUND**

The Santa Clara County District Attorney filed a juvenile wardship petition under Welfare and Institutions Code section 602, subdivision (a) (the petition), alleging that T.C. committed six felony offenses: four counts of robbery (Pen. Code, § 212.5, subd. (c))<sup>1</sup>; counts 1, 2, 3, & 6), and two counts of threats to commit a crime resulting in death or great bodily injury (§ 422; counts 4 & 5). Counts 1, 2, and 3 included allegations that T.C. personally used a deadly or dangerous weapon (§ 12022, subd. (b)(1)).

While the petition was pending, the juvenile court found that T.C. had violated the conditions of his court-ordered electronic monitoring program (EMP) and ordered that T.C. be detained in juvenile hall.

Prior to the contested jurisdictional hearing, the prosecution amended counts 4 and 5 of the petition to allege violations of section 136.1, subdivision (b)(1), for attempting to dissuade a victim or witness from reporting a crime.

At the jurisdictional hearing, the prosecution presented the testimony of four minor victims of the alleged crimes.<sup>2</sup> One minor testified that T.C. contacted him via Snapchat about meeting at a park and subsequently robbed him there. Another minor testified that, after the robbery, he received a message from T.C. via Snapchat that said, “ ‘See you at school. I’m going to kill you. I have a Glock.’ ” A third minor testified

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<sup>1</sup> Unspecified statutory references are to the Penal Code.

<sup>2</sup> A complete recitation of the evidence presented at the hearing is not included in this opinion because the omitted details are not relevant to the claims T.C. raises on appeal.

that he received a text message from T.C. during an argument on Snapchat about the robbery that said, “ ‘I wasn’t going to stab you,’ or something—stuff like that.” Their exchange over Snapchat also included T.C. asking the minor why he was “snitching” and goading him for not fighting back during the robbery and for being afraid.

After presenting its case, the prosecution moved to dismiss counts 2 and 3. The juvenile court granted the motion. At the conclusion of the hearing, the juvenile court dismissed count 6 due to insufficient evidence and sustained the allegations in counts 1, 4, and 5.

At the dispositional hearing, the juvenile court declared T.C. a ward of the court and returned him to the custody of his guardian on probation with conditions. The conditions imposed by the juvenile court included two that permitted law enforcement to search T.C.’s electronic devices and social media accounts, and two that prohibited T.C. from associating with gang members, participating in gang activity, or visiting locations with known gang-related activity.

## **II. DISCUSSION**

### *A. Challenges to the Probation Conditions*

T.C. claims that the electronic search conditions are unconstitutionally overbroad and should be modified to allow only the search of electronic content that is “reasonably likely to yield evidence of noncompliance with probation conditions.” In addition, T.C. contends that the electronic search conditions and the gang conditions are unconstitutionally vague because they do not provide T.C. or law enforcement with “fair warning” of what is permitted and proscribed.<sup>3</sup>

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<sup>3</sup> T.C. does not claim that the challenged probation conditions are unreasonable under *People v. Lent* (1975) 15 Cal.3d 481, which held that “a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.” (*Id.* at p. 486.)

## 1. Factual Background

At the dispositional hearing, defense counsel objected to the electronic search conditions (Nos. 20 and 21<sup>4</sup>) and the gang conditions (Nos. 30 and 31<sup>5</sup>). Specifically, defense counsel argued, “And those two—those are the search conditions on social media, and they are not gang conditions, but they are associating [T.C.] to have some involvement in a gang. And I don’t believe there’s a nexus, especially in this case. I’m not sure where that comes from. So we would be objecting to that also.”

The juvenile court overruled the objection. Regarding the electronic search conditions, the juvenile court and the probation department’s court officer noted that the crimes involved the use of Snapchat to send messages to the victims. As to the gang conditions, the court noted an incident involving T.C. that had gang overtones that had occurred while he was in juvenile hall.<sup>6</sup> Based on this information, the court found that the gang conditions “are appropriate, and . . . it’s in [T.C.’s] best interest to not hang around with people who could be involved in a gang.”

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<sup>4</sup> These conditions provide: “20. The minor shall provide all passwords to any electronic devices (including but not limited to cellular telephones, computers or notepads) within his or her custody or control and shall submit said devices to search at any time without a warrant by any peace officer; [¶] 21. The minor shall provide all passwords to any social media sites (including but not limited to Facebook, Instagram, Twitter and Mocospace) and shall submit said sites to search at any time without a warrant by any peace officer.”

<sup>5</sup> These conditions provide: “30. That said minor not knowingly associate with any person whom he knows to be, or that the Probation Officer informs him to be, a gang member; [¶] 31. That said minor not knowingly participate in any gang activity and not visit any specific location known to him to be, or that his/her Probation Officer informs him to be, an area of gang-related activity.”

<sup>6</sup> The probation officer’s report stated that T.C. got into a fight with another youth in juvenile hall and had previously “ ‘checked’ ” the youth by asking him if he was from “ ‘7 trees’ ” (a criminal street gang).

## 2. Legal Principles

“The juvenile court has wide discretion to select appropriate conditions and may impose ‘ “any reasonable condition that is ‘fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.’ ” ’ ” (*In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*)). “In distinguishing between the permissible exercise of discretion in probationary sentencing by the juvenile court and that allowed in ‘adult’ court, [our Supreme Court has] advised that, ‘[a]lthough the goal of both types of probation is the rehabilitation of the offender, “[j]uvenile probation is not, as with an adult, an act of leniency in lieu of statutory punishment. . . . [¶] In light of this difference, a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court. . . . [¶] . . . [N]o choice is given to the youthful offender [to accept probation]. By contrast, an adult offender “has the right to refuse probation, for its conditions may appear to defendant more onerous than the sentence which might be imposed.” ’ ” (*Ibid.*, citations omitted.)

“Even absent an objection, a defendant may, on appeal, argue a condition is unconstitutional if the claim presents a ‘ “ ‘pure question[ ] of law that can be resolved without reference to the particular sentencing record developed in the trial court.’ ” ’ ”<sup>7</sup> (*People v. Moran* (2016) 1 Cal.5th 398, 403, fn. 5; see also *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143 (*Shaun R.*)).

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<sup>7</sup> We understand defense counsel’s objection in the juvenile court as one based on reasonableness grounds under *Lent*. T.C.’s current claims of overbreadth and vagueness were not preserved for appellate review. Thus, we limit our review of T.C.’s claims to the purely legal inquiry of whether the challenged conditions are overbroad or vague on their face. (See *Sheena K.*, *supra*, 40 Cal.4th at pp. 885, fn. 5 & 888–889.)

Whether a probation condition is unconstitutionally vague or overbroad is a question of law, which we review de novo. (*Sheena K.*, *supra*, 40 Cal.4th at p. 888; *Shaun R.*, *supra*, 188 Cal.App.4th at p. 1143.)

### 3. Overbreadth Challenge

“A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.” (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) “The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) “[A] facial overbreadth challenge is difficult to sustain.” (*Williams v. Garcetti* (1993) 5 Cal.4th 561, 577; see also *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1109 [explaining “that a facial challenge to a law on grounds that it is overbroad and vague is an assertion that the law is invalid in all respects and cannot have any valid application”].)

T.C. argues that the electronic search conditions potentially intrude on his “ ‘private affairs’ ” and allow law enforcement to view “all sorts of private information stored on the electronic devices, well beyond any information relevant to the issue of whether [T.C.] is complying with the terms of probation.”

“We recognize that [a juvenile’s] probation status does not completely vitiate his constitutional privacy rights. [Citation.] However, the fact that a search of an electronic device may uncover comparatively more private information than the search of a person, or a personal item like a wallet, does not establish that a warrantless electronic search condition of probation is per se unconstitutional.” (*People v. Guzman* (2018) 23 Cal.App.5th 53, 65, fn. omitted, citing *People v. Ebertowski* (2014) 228 Cal.App.4th 1170.) The probation conditions upheld against an overbreadth challenge in *Ebertowski*

are almost identical to the electronic search conditions imposed on T.C. (*Ebertowski, supra*, at pp. 1173, 1175–1176.) Thus, we cannot say that the conditions here are invalid in all circumstances, and T.C. cannot sustain his facial overbreadth challenge.

Moreover, assuming *arguendo* that we reviewed T.C.’s claim as an as-applied overbreadth challenge, we would reject it. Because T.C. used an electronic device and Snapchat when committing the charged crimes and absconded from pre-hearing EMP supervision twice, broad access to T.C.’s electronic devices and social media accounts is appropriate to ensure adequate supervision and rehabilitation of T.C. while he is on probation. (See *In re Q.R.* (2017) 7 Cal.App.5th 1231, 1238–1239, review granted Apr. 12, 2017, S240222; *In re J.E.* (2016) 1 Cal.App.5th 795, 807, review granted Oct. 12, 2016, S236628; *People v. Nachbar* (2016) 3 Cal.App.5th 1122, 1128–1130, review granted Dec. 14, 2016, S238210.)<sup>8</sup>

For these reasons, we conclude that the electronic search conditions imposed on T.C. are not unconstitutionally overbroad.

#### 4. Vagueness Challenge

“A probation condition ‘must be sufficiently precise for the probationer to know what is required of him [or her], and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness.” (*Sheena K., supra*, 40 Cal.4th at p. 890.)

“[T]he underpinning of a vagueness challenge is the due process concept of ‘fair warning.’ ” (*Sheena K., supra*, 40 Cal.4th at p. 890.) “The vagueness doctrine ‘ “bars

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<sup>8</sup> Review has been granted in these cases pending decision in *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted February 17, 2016, S230923, which presents the question whether the trial court erred in imposing an “electronics search condition” on the juvenile as a condition of his probation when that condition had no relationship to the crimes he committed but was justified on appeal as reasonably related to future criminality under *People v. Olguin* (2008) 45 Cal.4th 375 because it would facilitate the juvenile’s supervision.

enforcement of ‘a statute which either forbids or requires the doing of an act in terms so vague that [people] of common intelligence must necessarily guess at its meaning and differ as to its application.’ ” ” ” (Ibid.) In conducting our independent review of the challenged conditions, we are “guided by the principles that ‘abstract legal commands must be applied in a specific *context*,’ and that, although not admitting of ‘mathematical certainty,’ the language used must have ‘ “reasonable specificity.” ’ ” (Ibid.)

“[A] probation condition should not be invalidated as unconstitutionally vague ‘ “if any reasonable and practical construction can be given to its language.” ’ ” ” (People v. Hall (2017) 2 Cal.5th 494, 501.) “ ‘[R]eference to other definable sources’ ” can “make sufficiently clear the [probation] condition[’s] scope.” (Ibid.)

T.C. contends that the electronic search conditions are vague because he and law enforcement “must guess as to whether a permissible ‘search of the devices’ is limited [to] specific digital content or is all encompassing” to include the “myriad . . . types of information readily available on an electronic device like a cellular phone.” Similarly, T.C. asserts that he and law enforcement must “guess whether the ‘social media accounts’ include a school account that allows [T.C.] to communicate with a teacher, a job board that might allow [T.C.] to search for employment, and all other applications deemed ‘social,’ or if the search is limited to only those accounts that [T.C.] might use to communicate with his peers.”

We are not persuaded by T.C.’s claim of error. Condition No. 20 is not vague because it includes examples of the types of electronic devices that are subject to search, namely “cellular telephones, computers, or notepads.” This condition also provides reasonable warning to T.C. that the array of information that could be stored on his electronic devices can be examined to ensure that he is progressing in his rehabilitation. Although the condition is broad in scope, T.C. “is protected by the principle that warrantless probation searches must not be conducted in an arbitrary, capricious, or

harassing manner.” (*People v. Maldonado* (2018) 22 Cal.App.5th 138, 145, review granted June 20, 2018, S248800.)

Condition No. 21 is reasonably specific as well. The terms “social media sites” can be reasonably construed in context and by reference to other definable sources. The condition includes examples of social media sites/accounts that can be searched, namely “Facebook, Instagram, Twitter and Mocospace.” In addition, “social media” is commonly defined as “forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos).” (Merriam-Webster Dict. Online (2019).)<sup>9</sup> In turn, “social networking” is defined as “the creation and maintenance of personal and business relationships especially online.” (Merriam-Webster Dict. Online (2019).)<sup>10</sup> “Microblogging” is defined as “blogging done with severe space or size constraints typically by posting frequent brief messages about personal activities.” (Merriam-Webster Dict. Online (2019).)<sup>11</sup>

The examples of the “social media sites” covered by this condition and the plain meaning of the terms provide sufficient specificity so that T.C. knows what types of social media accounts are subject to search. Further, the condition is not reasonably read as authorizing a search of a “school account” used to communicate with teachers or a “job board” used to find employment—especially when viewed in light of the juvenile court’s reference to T.C.’s prior use of Snapchat. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 890.)

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<sup>9</sup> <<https://www.merriam-webster.com/dictionary/social%20media>> (as of June 5, 2019), archived at: <<https://perma.cc/D5JL-G64V>>

<sup>10</sup> <<https://www.merriam-webster.com/dictionary/social%20networking>> (as of June 5, 2019), archived at: <<https://perma.cc/4SGA-UB97>>

<sup>11</sup> <<https://www.merriam-webster.com/dictionary/microblogging>> (as of June 5, 2019), archived at: <<https://perma.cc/6EX7-UFYX>>

For these reasons, we conclude the electronic search conditions are not unconstitutionally vague on their face.

Regarding the gang conditions (Nos. 30 and 31), T.C. contends that they are vague because “the term ‘gang’ is not sufficiently defined.” T.C. asserts that the vagueness can be cured by “including the definition of ‘gang’ found in California Penal Code section 186.22, subdivisions (e) and (f).”

Although the gang conditions imposed by the juvenile court include a knowledge requirement and the term “gang” could reasonably be understood to refer to a “criminal street gang” as defined by the Penal Code, to eliminate any potential due process concerns we modify the probation conditions to expressly include the statutory definition of criminal street gangs. (See *People v. Leon* (2010) 181 Cal.App.4th 943, 950–951; *People v. Lopez* (1998) 66 Cal.App.4th 615, 631.) With this modification, T.C. has been provided “fair warning” of what is required of him and what the court must find to hold him accountable for a violation of the gang conditions.

### **III. DISPOSITION**

The conditions of probation in the dispositional order are modified to include the following: “For purposes of conditions Nos. 30 and 31, ‘gang’ refers to a criminal street gang as defined by Penal Code section 186.22, subdivision (f).” With this modification, the judgment is affirmed.

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DANNER, J.

WE CONCUR:

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GREENWOOD, P.J.

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BAMATTRE-MANOUKIAN, J.

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